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SUPPLEMENTARY EXTRADITION TREATY WITH THE FEDERAL REPUBLIC OF GERMANY

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE SUPPLEMENTARY TREATY TO THE TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE FEDERAL REPUBLIC OF GERMANY CONCERNING EXTRADITION SIGNED AT WASHINGTON ON OCTOBER 21, 1986

JUNE 25, 1987.—Treaty was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate.

U.S. GOVERNMENT PRINTING OFFICE

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LETTER OF TRANSMITTAL

THE WHITE HOUSE, *June 25, 1987.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Supplementary Treaty to the Treaty Between the United States of America and the Federal Republic of Germany Concerning Extradition signed at Washington on October 21, 1986. I transmit also, for the information of the Senate, the report of the Department of State with respect to the Supplementary Treaty.

The Supplementary Treaty adds to and amends the Treaty Between the United States and the Federal Republic of Germany Concerning Extradition, signed at Bonn on June 20, 1978. It represents an important step in improving law enforcement cooperation and combatting terrorism by excluding from the scope of the political offense exception serious offenses typically committed by terrorists, e.g., murder, manslaughter, kidnapping, use of a destructive device capable of endangering life or causing grievous bodily harm, and attempt or conspiracy to commit the foregoing offenses.

The Supplementary Treaty also will help to improve implementation of the current Extradition Treaty in several other respects.

I recommend that the Senate give early and favorable consideration to the Supplementary Treaty and give its advice and consent to ratification.

RONALD REAGAN.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, June 4, 1987.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you the Supplementary Treaty to the Treaty Between the United States of America and the Federal Republic of Germany Concerning Extradition signed at Washington on October 21, 1986. I recommend that the Supplementary Treaty be transmitted to the Senate for advice and consent to ratification.

The Supplementary Treaty supplements and amends the Treaty between the United States and the Federal Republic of Germany Concerning Extradition, signed at Bonn on June 20, 1978 (32 UST 1485; TIAS 9785). The Supplementary Treaty Concerning Extradition would exclude specified crimes of violence, typically committed by terrorists, from the scope of the political offense exception to extradition. It therefore represents an important step toward improving law enforcement cooperation and countering the threat of international terrorism and other crimes of violence. In addition, the Supplementary Treaty will help improve implementation of the current Treaty in several other respects.

Article 1(a) of the Supplementary Treaty amends Article 2, paragraph (1) of the current Treaty—the "extraditable offenses" provision—by defining extraditable offenses as offenses which are punishable under the laws of both States, whether dual criminality follows from Federal or State laws. In addition, Article 1(a) of the Supplementary Treaty specifies that dual criminality may include offenses based upon participation in an association whose aims and activities include the commission of extraditable offenses, such as an association involved in racketeering or criminal enterprise under the laws of the United States. Article 1(c) deletes the Appendix to the current Treaty, which lists extraditable offenses.

This amendment furthers the modern practice of permitting extradition for prosecution for any crime punishable under the laws of both contracting Parties for a minimum period of more than one year rather than listing offenses for which extradition may be granted. This obviates the need to renegotiate or supplement the Treaty as new types of criminal activity, such as computer-related crimes or money laundering, become punishable under the laws of both States.

Article 1(b) of the Supplementary Treaty amends Article 6 of the current treaty to specifically enumerate fiscal offenses—offenses in connection with taxes, duties, customs and exchange—for which ex-

tradition may be refused if the competent executive authority determines that extradition for any such offense would be contrary to the public policy or other essential interests of the Requested State. The current treaty contains a similar provision but describes the fiscal offenses by reference to the Appendix to the Treaty.

Article 2 of the Supplementary Treaty effectively limits the scope of Article 4 of the current Treaty—the political offense exception. It amends article 4, paragraph (3) of the current Treaty by specifying additional crimes which shall not be regarded as political offenses: namely, murder; manslaughter; malicious assault; kidnapping; specified explosives offenses; and conspiracy or attempt to commit any of the foregoing offenses.

In addition, the Supplementary Treaty continues a provision, existing in the current Treaty, that excludes from the reach of the political offense exception any offense for which both the United States and the Federal Republic of Germany have an international obligation to extradite the person or submit his case for prosecution; i.e., aircraft hijacking pursuant to the Convention for the Suppression of Unlawful Seizure of Aircraft, opened for signature at The Hague on December 16, 1970; aircraft sabotage pursuant to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, opened for signature at Montreal on September 23, 1973; crimes against internationally protected persons, including diplomats, under the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, opened for signature at New York on December 14, 1973; and hostage taking pursuant to the International Convention against the Taking of Hostages, opened for signature at New York on December 18, 1979. This exclusion will also extend to crimes similarly defined in future multilateral treaties.

Article 3 of the Supplementary Treaty makes an addition to Article 20 of the current Treaty. Article 20 of the current Treaty provides that after a decision on an extradition request has been rendered by a competent court, the Requested State may defer surrender of a person being proceeded against or serving a sentence in the Requested State for a different offense until the proceedings are concluded or the sentence is fully executed. Article 3 of the Supplementary Treaty provides that, alternatively, the Requested State may temporarily surrender the person sought to the Requesting State for prosecution. Therefore, this provision will allow a person serving a long sentence in the Requested State to be tried promptly in the Requesting State and then be returned to complete his sentence. This alternative of temporary surrender is routinely included in our modern extradition treaties.

Article 4 of the Supplementary Treaty provides that the Supplementary Treaty's provisions shall apply to any offense committed, any request made or any person found extraditable before or after the entry into force of the Supplementary Treaty, but shall not apply to an offense committed before the Supplementary Treaty enters into force if the offense in question was not an offense under the laws of both Contracting Parties at the time of its commission.

Article 5 of the Supplementary Treaty provides that the Supplementary Treaty shall also apply to Land Berlin, if the Government of the Federal Republic of Germany does not make a contrary dec-

laration within three months of the date of entry into force of the Supplementary Treaty. Article 33 of the current Treaty is substantively identical.

Article 6(1) of the Supplementary Treaty provides that the Supplementary Treaty shall form an integral part of the current Treaty. Article 6(2) of the Supplementary Treaty provides that it shall enter into force upon the exchange of instruments of ratification and shall be subject to termination in the same manner as the current Treaty.

The Department of Justice joins the Department of State in favoring transmission of this Supplementary Treaty to the State at the earliest possible date.

Respectfully submitted,

GEORGE P. SHULTZ.

Supplementary Treaty to the Treaty Between the United States of America and the Federal Republic of Germany Concerning Extradition

The United States of America and the Federal Republic of Germany,

Desiring to make more effective the Treaty of June 20, 1978 between the United States of America and the Federal Republic of Germany concerning Extradition (hereinafter referred to as "the Extradition Treaty"),

Have agreed as follows:

ARTICLE 1

(a) Article 2, paragraph (1) of the Extradition Treaty is amended to read as follows:

"(1) Extraditable offenses under the Treaty are offenses which are punishable under the laws of both Contracting Parties. In determining what is an extraditable offense it shall not matter whether or not the laws of the Contracting Parties place the offense within the same category of offense or denominate an offense by the same terminology, or whether dual criminality follows from Federal, State or Laender laws. In particular, dual criminality may include offenses based upon participation in an association whose aims and activities include the commission of extraditable offenses, such as a criminal society under the laws of the Federal Republic of Germany or an association involved in racketeering or criminal enterprise under the laws of the United States."

(b) Article 6 of the Extradition Treaty is amended to read as follows:

"Extradition may be refused for offenses in connection with taxes, duties, customs and exchange if the competent executive authority of the Requested State determines that extradition for any such offense would be contrary to the public policy or other essential interests of the Requested State."

(c) The Appendix to the Extradition Treaty is hereby deleted.

ARTICLE 2

Article 4, paragraph (3) of the Extradition Treaty is amended to read as follows:

"For the purpose of this Treaty the following offenses shall not be deemed to be offenses within the meaning of paragraph (1):

(a) an offense for which both Contracting Parties have the obligation pursuant to a multilateral international agreement to extradite the person sought or to submit his case to their competent authorities for decision as to prosecution;

(b) murder, manslaughter, maliciously wounding, or inflicting grievous bodily harm;

(c) kidnapping, abduction, or any form of unlawful detention, including taking a hostage;

(d) placing or using an explosive, incendiary or destructive device capable of endangering life, or of causing grievous bodily harm, or of causing substantial property damage;

(e) an attempt or conspiracy to commit, or participation in, any of the foregoing offenses."

ARTICLE 3

The title of Article 20 of the Extradition Treaty is amended to read as follows: "Temporary or Deferred Surrender." The text of Article 20 is renumbered to become Article 20, paragraph (1), and the following text is inserted as Article 20, paragraph (2):

"(2) Alternatively, the Requested State may temporarily surrender the person sought to the Requesting State for the purpose of prosecution. The person so surrendered shall be kept in custody in the Requesting State and shall be returned to the Requested State after conclusion of the proceedings against that person, in accordance with conditions to be determined by mutual agreement of the Contracting Parties."

ARTICLE 4

This Supplementary Treaty shall apply to any offense committed, and to any request made, or to any person found extraditable, before or after this Supplementary Treaty enters into force, provided that this Supplementary Treaty shall not apply to an offense committed before this Supplementary Treaty enters into force which was not an offense under the laws of both Contracting Parties at the time of its commission.

ARTICLE 5

(1) This Supplementary Treaty shall also apply to Land Berlin provided that the Government of the Federal Republic of Germany does not make a contrary declaration to the Government of the United States of America within three months of the date of entry into force of this Supplementary Treaty.

(2) Upon the application of this Supplementary Treaty to Land Berlin, references in the Supplementary Treaty to the Federal Republic of Germany or to the territory thereof shall be deemed also to be references to Land Berlin.

ARTICLE 6

(1) This Supplementary Treaty shall form an integral part of the Extradition Treaty.

(2) This Supplementary Treaty shall be subject to ratification and the instruments of ratification shall be exchanged at Bonn as soon as possible. It shall enter into force upon the exchange of instruments of ratification. It shall be subject to termination in the same manner as the Extradition Treaty.

In witness whereof, the undersigned, being duly authorized thereto by their respective Governments, have signed this Supplementary Treaty.

Done at Washington this twenty-first day of October 1986, in duplicate, in the English and German languages, both texts being equally authentic.

FOR THE UNITED STATES OF AMERICA:

FOR THE FEDERAL REPUBLIC OF GERMANY: